

REMARKS

Claims 1-2, 5-6, 8-10 and 13-16 are pending in the present application. By this response, claims 1, 5 and 9 are amended. Claims 1, 5 and 9 are amended to correct for antecedent basis. Support for these amendments may be found at least on page 15, lines 4-5 of the current specification. Reconsideration of the claims in view of the above amendments and the following remarks is respectfully requested.

I. 35 U.S.C. § 112, Second Paragraph

The Office Action rejects claims 1, 2, 5, 6, 8-10 and 13-16 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter, which applicants regard as the invention. This rejection is respectfully traversed.

As to claims 1, 5, 9, and 13, the Office Action states:

Independent claims 1, 5, 9, and 13 are full of contradictions which renders the subject matter difficult to analyze. For example, the independent claims recite the limitation "receiving a bid for said item from a first bidder which is *currently a high bid* for said item" (emphasis added). The claims also recite, "identifying a *previously recorded proxy bid* from a second bidder *which is greater than said current high bid* but not greater than said current high bid plus said minimum increment" (emphasis added). It is unclear to the Examiner how the first bidder's bid can be deemed as the current high bid when the second bidder has previously placed a higher bid. As an example, assume that the first bidder places a bid of \$5.00 and that the second bidder places a proxy bid of \$5.50. This scenario would meet the limitations identified above, however, it is unclear how or why the first bidder's bid of \$5.00 would be regarded as the current high bid when clearly the second bidder has a higher bid. Furthermore, the claims also recite "specifying a minimum increment for bidding on an item" It is unclear to the Examiner how the second bidder can place a proxy bid "...which is greater than said current high bid but not greater than said current high bid plus said minimum increment" This would mean that the second bidder's proxy bid is either less than or equal to the current high bid plus said minimum increment. If the first case is true then it means that the second bidder's proxy bid violates the "...minimum increment for bidding..." limitation. As an example, assume that the minimum increment is \$2.00 and that the first bidder's bid is \$10.00. According to the claim language, the invention

will now try to identify a second bidder who has placed a proxy bid which is greater than \$10.00 but less than \$12.00 ("...greater than said current high bid but not greater than said current high bid plus said minimum increment"). This would mean that the second bidder's proxy bid violates the minimum increment for bidding since it is less than \$12.00. The Examiner is confused as to why a minimum increment is specified if it is not enforced? On the other hand, if the second bidder's proxy bid is equal to the current high bid plus said minimum increment (i.e. \$12.00) then it means that the proxy bid is not an off-increment bid but rather an on-increment bid. Finally, claims 1, 5, 9, and 13 are confusing because they repeatedly use the same terms and it is unclear to the Examiner if these terms are referring to same bid. For example, claim 1 recites the terms "high bid" and "current high bid" in lines 4 and 9 and lines 7 and 10 respectively. For these reasons, claims 1, 5, 9, and 13 are rendered indefinite.

Office Action dated June 28, 2004, pages 2-4.

Claim 1, which is representative of the other rejected independent claims 5 and 9 with regard to similarly recited subject matter, reads as follows:

1. A method in an electronic auction for generating off-increment proxy bids, said method comprising the computer implemented steps of:
specifying a minimum increment for bidding on an item;
receiving a bid for said item from a first bidder which is a current high bid for said item;
identifying a previously recorded proxy bid from a second bidder which is greater than said current high bid but not greater than said current high bid plus said minimum increment; and
generating by said electronic auction an off-increment bid which becomes a new high bid for said item utilizing said proxy bid, wherein said second bidder holds the new high bid for said item, further wherein said off-increment bid does not exceed said bid received from said first bidder by said minimum increment, and wherein said off-increment bid does not exceed said proxy bid.

Applicants respectfully submit that the claims do clearly define the subject matter being claimed. Applicants respectfully submit that a proxy bid is clearly defined in the specification as an offer that allows a potential buyer to participate in the ongoing auction without having to constantly monitor the auction. The potential buyer may enter a proxy offer which is the maximum price this potential buyer is willing to pay for the item. Thus, the presently claimed "identifying a previously recorded proxy bid from a second bidder which is greater than said current high bid but not greater than said current high

bid plus said minimum increment" only requires that the proxy bid be somewhere between the current high bid and the current high bid plus a minimum increment. Using the example provided by the Examiner on page 3 of the Office Action, the proxy bid must be between \$10.00 and \$12.00. In addition, if the original bid of the second bidder was, for example, \$3.50 with a proxy bid of \$11.50, this would meet the presently claimed limitation of "specifying a minimum increment for bidding on an item" of \$2.00 as provided in the example, as the next increments for the second bidder would be \$5.50, \$7.50 and so on. Thus, when a first bidder submits a \$10.00 bid, it does at that time become a current high bid. Then, the presently claimed invention, identifies a previously recorded proxy bid from the second bidder which is greater than the current high bid but not greater than said current high bid plus said minimum increment, which would be \$12.00. Then, the presently claimed invention generates an off-increment bid which becomes a new high bid for the item utilizing said proxy bid, which may be \$10.01. Thus, the second bidder now holds the new high bid for the item and the off-increment bid does not exceed the bid received from the first bidder by said minimum increment, which would be \$12.00. Furthermore the off-increment bid does not exceed the proxy bid and meet the minimum increment as the minimum increment for the second bidder would have been \$5.50 or greater; \$10.01 is greater. The specification provides support for these arguments at least on page 8, lines 13 to page 9, line 19.

In addition, claims 1, 5 and 9 are amended to clarify the confusion with regard to the terms within these claims. Therefore the rejection of claims 1, 2, 5, 6, 8-10 and 13-16 under 35 U.S.C. § 112, second paragraph, should be withdrawn.

II. 35 U.S.C. § 103, Alleged Obviousness, Claims 1, 2, 5, 6, 8-10 and 13-16

The Office Action rejects claims 1, 2, 5, 6, 8-10 and 13-16 under 35 U.S.C. § 103(a) as being allegedly unpatentable over Fisher et al. (U.S. Patent No. 6,243,691 B1). Because this rejection is essentially the same as in the previous Office Action, this rejection is respectfully traversed for the same reasons stated in the previous Response filed April 6, 2004, the remarks of which are hereby incorporated by reference. The

following remarks are provided in rebuttal to the Examiner's statement in the present Office Action beginning on page 6, paragraph 2.

As to claims 1, 5 and 9, the Office Action states:

Referring to claims 1, 5, and 9, Fisher teaches a method and system for generating proxy bids in an electronic auction comprising:

- specifying a minimum increment for bidding on an item (Figure 2);
- receiving a bid for said item from a first bidder which is currently a high bid for said item (Figure 2);
- identifying a previously recorded proxy bid from a bidder (column 8, line 56 ~ column 9, line 6).

Fisher does not teach that the proxy bid from a second bidder is greater than the current high bid but not greater than said current high bid plus said minimum increment. However, Fisher teaches that a plurality of bidders are allowed to establish the limit amount of their proxy bids when the bids are initially placed (column 8, lines 56-60). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to allow a bidder to set the limit of the proxy bid to whatever amount the bidder desired. One of ordinary skill in the art would have been motivated to do so in order to allow the bidder to place a bid that he or she felt was competitive. Fisher does not teach generating an off-increment bid which becomes a high bid for said item utilizing said proxy bid, wherein said second bidder holds a current high bid for said item, further wherein said off-increment bid does not increase said bid received from said first bidder by said increment, and wherein said off-increment bid does not exceed said proxy bid. However, Fisher teaches that during proxy bidding a bid may be incremented based on the percentage of the bid (column 12, lines 33-45). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to adjust a bid upward by using a percentage of the bid as opposed to a minimum increment. One of ordinary skill in the art would have been motivated to do so in order to guarantee a proxy bidder the lowest possible price, as taught by Fisher (column 12, lines 58-61).

Office Action dated June 28, 2004, pages 4-5.

Claim 1, which is representative of the other rejected independent claims 5 and 9 with respect to similarly recited subject matter, reads as follows:

1. A method in an electronic auction for generating off-increment proxy bids, said method comprising the computer implemented steps of:
 - specifying a minimum increment for bidding on an item;
 - receiving a bid for said item from a first bidder which is a current high bid for said item;

identifying a previously recorded proxy bid from a second bidder which is greater than said current high bid but not greater than said current high bid plus said minimum increment; and

generating by said electronic auction an off-increment bid which becomes a new high bid for said item utilizing said proxy bid, wherein said second bidder holds the new high bid for said item, further wherein said off-increment bid does not exceed said bid received from said first bidder by said minimum increment, and wherein said off-increment bid does not exceed said proxy bid.

In the April 6, 2004 response, Applicants argued that, as noted by the Examiner, Fisher does not teach generating an off-increment bid which becomes a high bid for the item utilizing said proxy bid, wherein a second bidder holds a current high bid for the item, and wherein the off-increment bid does not exceed the bid from the first bidder by the increment and wherein the off-increment bid does not exceed the proxy bid.

The description by Fisher to adjust a bid upward "using a percentage of the bid as opposed to a minimum increment" is insufficient to obviate the step of generating an off-increment bid by utilizing a proxy bid and is wholly insufficient to insure that the off-increment bid is increased from the received bid by an amount not equal to the minimum increment. Absent some teaching, suggestion, or incentive to modify Fisher in this manner, the presently claimed invention can be reached only through an improper use of hindsight using the applicants' disclosure as a template to make the necessary changes to reach the claimed invention.

Furthermore, Fisher does not teach, suggest, or give any incentive to make the needed changes to reach the presently claimed invention. Fisher actually teaches away from the presently claimed invention. For example, as noted by the Examiner, Fisher teaches a method to guarantee a proxy bidder the lowest possible price (column 12, lines 58-61) as opposed to a technique that enables off-increment proxy bids such that the deficiencies of prior art systems resulting in a seller being disadvantaged by selling an item for a lower price than that offered by a proxy bid when the proxy bid exceeds a high bid by an amount less than a minimum auction increment as in the presently claimed invention. Absent the Examiner pointing out some teaching or incentive to implement off increment proxy bids by Fisher, one of ordinary skill in the art would not be led to modify Fisher to reach the present invention when the reference is examined as a whole.

The present Office Action fails to provide rebuttal to these arguments, but, rather, states that the arguments are moot in view of the new ground(s) of rejection. The only new grounds of rejection are under 35 U.S.C. § 112, second paragraph, which have been discussed above. Thus, Applicants respectfully submit that these arguments are still valid and Fisher does not teach or suggest the specific features of independent claims 1, 5 and 9. Moreover, the present Office Action fails to provide a section of Fisher that teaches or suggest the specific features recited in claims 13-16.

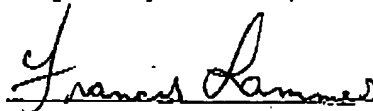
In view of the above, Applicants respectfully submit that Fisher fails to teach or suggest all of the features of independent claims 1, 5, 9 and 13. At least by virtue of their dependency on claims 1, 5, 9 and 13, the specific features of claims 2, 6, 8, 10 and 14-16 are not taught or suggested by Fisher. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 1, 2, 5, 6, 9-10 and 13-16 under 35 U.S.C. § 103.

III. Conclusion

It is respectfully urged that the subject application is patentable over the prior art of record and is now in condition for allowance. The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

DATE: September 28, 2004

Respectfully submitted,



Francis Lammes
Reg. No. 55,353
Yee & Associates, P.C.
P.O. Box 802333
Dallas, TX 75380
(972) 367-2001
Agent for Applicants